


# ***MANUFACTURED HOUSING CONSENSUS COMMITTEE***

**TO:** Manufactured Housing Consensus Committee Members  
**FROM:** Robert E. Solomon   
**DATE:** December 19, 2002  
**SUBJECT:** Ballots for MHCC - Consumer Assistance Program- Final Proposal  
Accepted by MHCC

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The ballot and ballot material for the subject document is enclosed. Your vote on this document is to be based upon the Committee action for the proposal as shown.

If you wish to vote negative or if you abstain, please indicate your reason for doing so. Do not cast a negative vote for items that are editorial in nature, but do bring any such items to my attention.

The final date for return of this ballot is 17 January 2003. Feel free to call or email me if you have any questions.

By way of a brief explanation, you have 4 voting options on this ballot. If you agree with this proposal as is, you simply vote affirmative. If you agree with the proposal, but have a minor concern with one or two items, or if you see some editorial glitch, you may want to vote affirmative with comment. If you disagree with a substantial part of the proposal, you would vote in the negative. Abstain votes are normally only reserved if you believe there is some conflict of interest, or if you do not feel qualified to pass judgment on an issue. I do not believe any one on the MHCC has any reason to abstain.

Once the 17 January 2003 date has passed we will tabulate the results, recirculate any affirmative with comment, negative, or abstain votes with the requisite reasons, and give you a chance to review those and change your vote. Between now and that date, you will receive one or two reminders on the impending ballot due date.

When you vote, you need only return the one page ballot. Please feel free to attach additional pages if you need to provide more information on your reasons.

# **MANUFACTURED HOUSING CONSENSUS COMMITTEE**

LETTER BALLOT for MHCC

Vote on the Release of Proposed Draft of MHCC Consumer Assistance Final Proposal  
Accepted by MHCC 12-05-02

☐

**AFFIRMATIVE**

☐

**AFFIRMATIVE  
WITH COMMENT**

☐

**NEGATIVE**

☐

**ABSTAIN**

Reasons for Affirmative with Comment, Negative or Abstaining Votes:

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\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Please return by 17 January 2003 to:

Fax: 617-984-7110

Phone: 617-984-7404

Jill McGovern

National Fire Protection Association

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## § 3282.7 Definitions

(i) *Dealer* - See *Retailer*

(j) *Defect* means a failure to comply, or the failure of a component used to comply with an applicable Federal Manufactured home safety and construction standard that renders the manufactured home or any part thereof not fit for the ordinary use for which it was intended, but does not result in an unreasonable risk of injury or death to occupants of the affected manufactured home. See related definitions of *imminent safety hazard* (definition q), *non-compliance* (definition x), and *serious defect* (definition ff).

(dd) *Retailer* means any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons whom in good faith purchase or lease a manufactured home for purposes other than resale.

~~ee~~ *Responsible Party* means any of the following: manufactured home manufacturers, retailers, distributors, contractors, product suppliers, product distributors, installers, transporters, developers, landscapers, and/or homeowners

## Subpart -Consumer Complaint Handling and Remedial Actions

### § 3282.401 Purpose and scope.

- (a) The purpose of this subpart is to establish a system under which the protections of the Act are provided with a minimum of formality and delay, but in which the rights of all parties are protected.
- (b) This subpart sets out the procedures to be followed by responsible parties, State Administrative Agencies, primary inspection agencies, and the Secretary to assure proper notification and/or correction with respect to manufactured homes as required by the Act.

Notification and correction may be required to be provided with respect to manufactured homes that have been sold or otherwise released by the manufacturer to another party when the responsible party, an SAA or the Secretary determines that an imminent safety hazard, serious defect, or defect may exist in those manufactured homes as set out herein. For non-compliances, corrections shall be required to the single home it's reported in.

- (c) This subpart sets out the rights of retailers under section 613 of the Act, 42 U.S.C. 5412, to obtain remedies from manufacturers in certain circumstances.

### § 3282.402 General principles.

- (a) Nothing in this subpart or in these regulations shall limit the rights of the purchaser under any contract or applicable law.
- (b) The liability of manufactured home manufacturers to provide remedial actions under this subpart is limited by the principle that manufacturers are not responsible for failures that occur in manufactured homes or parts thereof as the result of the actions of other responsible parties, normal wear and aging, gross and unforeseeable consumer abuse, or unforeseeable neglect of maintenance.
- (c) Responsibility for remedial actions under this subpart may also be assessed to responsible parties to the extent that they have contributed to or caused the failure.
- (d) The extent of a responsible party's responsibility for providing notification and/or correction depends upon the seriousness of problems for which they may be responsible under this subpart.
- (e) It is the policy of these regulations that all consumer complaints or other information indicating the possible existence of an imminent safety hazard, serious defect,

defect, or non-compliance should be referred to the manufacturer and/or retailer and/or other responsible party of the potentially affected manufactured home as early as possible so that the manufacturer or other responsible party can begin to timely respond to the consumer and take any necessary remedial actions. If the responsible party receiving the notice believes the issue is the responsibility of another responsible party, the information may be forwarded to that party.

### **§ 3282.403 Limitations**

This shall limit the requirements under this subpart for notification or correction to the time frames listed below;

- (a) By a manufactured home manufacturer or retailer, to a period of five (5) years from the date of first sale and completion of the installation of the manufactured home for the first purchaser. Any home over five (5) years in age from such date is exempt from these regulations or requirements for notification or correction by a manufactured home manufacturer or retailer;
- (b) By an installer, contractor, product supplier, product distributor, transporter, developer, or landscaper for work completed and/or product supplied, to a period of two (2) years from the date such work is completed or such product is supplied. Any home over two (2) years after the date of completion of such work is exempt from these regulations by an installer, contractor, product supplier, product distributor, transporter, developer, or landscaper.
- (c) The homeowner has a continuing obligation for providing adequate upkeep and maintenance of their manufactured home.
- (d) Manufacturers and/or other responsible parties are not liable for the notification and correction of work done by others.

### **§ 3282.404 Consumer complaint and information referral.**

When a consumer complaint or other information indicating the likely existence of a non-compliance, defect, serious defect, or imminent safety hazard is received by a State Administrative Agency or the Secretary, the SAA or the Secretary shall forward the complaint or other information to the responsible party. The responsibility to assure proper investigation and assignment of responsible party belongs to the SAA in the state in which the home is located. The SAA or the Secretary may, when it appears from the complaint or other information that more than one manufactured home may be involved, simultaneously send a copy of the complaint or other information to the SAA of the State where the manufactured home was manufactured or to the Secretary if there is no such SAA. When it appears that an imminent safety hazard or serious defect may be involved, the SAA shall send a copy to the Secretary. The SAA in the state of production of the manufactured home shall assist the SAA in the state in possession of the manufactured home as needed. The SAA in the state of production shall be responsible to assure the manufacturer's records reflect the proper investigation, record keeping, corrective action, and responses of manufacturer actions.

### **§ 3282.405 Investigation, Determination, Repair and Notification by Responsible Parties.**

- (a) The manufacturer shall review its records to determine whether or not a defect, serious defect, or imminent safety hazard is indicated as set out in this subpart with respect to all manufactured homes produced by the manufacturer within five (5) years of the date of sale to the first purchaser, in which there likely exists an imminent safety hazard, serious defect, or defect.
- (b) Whenever a responsible party receives from any source information that indicates the

- (c) likely existence of a defect, serious defect, or imminent safety hazard in a manufactured home for which they are responsible for repair, the responsible party shall, as soon as possible, but not later than 20 days after receipt of the information, carry out any necessary investigations or inspections to determine and shall determine whether they are responsible for correction and/or notification. They shall report the results of the initial investigation to the SAA as required.
- (d) Determinations and investigations must be completed within 20 days of the date of notification. These determinations may be initial determinations with more thorough investigation to follow. The original assessment and determination is required within the 20-day period and may be followed up as more information is gathered during the process of investigation. The responsible party shall maintain complete records of all such information and determinations in a form that will allow the Secretary or an SAA to determine the severity of the defect serious defect, or imminent safety hazard.
- (e) The responsible party for the violation shall be required to determine the severity of the problem reported. The severity shall be determined as identified in the definitions as imminent safety hazard, serious defect, defect, or non-compliance. Such records shall be kept for a minimum of five (5) years from the date of completion of the investigation.
- (e) If the determination is a serious defect or an imminent safety hazard, the responsible party that caused the serious defect or imminent safety hazard shall be required to determine and identify how many homes have the same serious defect or imminent safety hazard. All homes with the same serious defect or imminent safety hazard must be corrected by the responsible party or their agent in accordance with the DAPIA design, regulation, or prevailing code, subject to the limitations in § 3282.403.
- (f) If the determination is a defect that affects the performance of the home, the party responsible for the defect shall be required to make a good faith determination as to the likely cause of the defect and a good faith determination as to whether a class is identifiable because the cause of the defect, actually known to the responsible party, is such that the same defect would probably have been systematically introduced by the responsible party into more than one home during the construction process at the manufacturer's plant, or the same defect would probably have been systematically introduced into more than one home by a non-manufacturer responsible party after the home was sold or otherwise released by the manufacturer. If the responsible party determines that a class exists, the responsible party shall provide notification of the defect to all affected homeowners as set out in this subpart. Such notice shall include a description of the defect and the possible solution or repair. If the SAA chooses to have the item repaired, the responsible party shall be required to make the repair in accordance with the DAPIA design, or the federal standards in effect at the date of manufacture of such home, or prevailing code for items not governed by the federal standards, whichever is applicable, subject to the limitations in § 3282.403. Reporting to the appropriate SAA or Secretary is required as requested.
- (g) If the determination is a non-compliance, repair is required, by the responsible party, of only the home involved in a complaint, but only if such a non-compliance affects the performance of the home.
- (h) For an individual complaint on a single home, upon discovery, all non-compliances, defects, serious defects, and imminent safety

hazards introduced during construction of the home in the manufacturer's construction facility that affects the performance of the home shall be corrected by the manufacturer, and those created as a result of work another responsible party, such as retailer, distributor, installer, contractor, product supplier, product distributor, transporter, developer, or landscaper completed on the home shall be corrected by the party responsible when the performance of the home is affected, subject to the limitations in § 3282.403.

- (i) All required work shall be completed within sixty (60) days of the required determination. Providing for the 20 day investigation period and adding the 60 day repair period, there is an 80 day period of time to complete investigation and corrective action. Extensions may be granted by the responsible SAA or the Secretary. Reporting to the appropriate SAA or Secretary is required as requested.
- (j) Damages that take the home out of compliance, resulting from any defect, serious defect, or imminent safety hazard are required to be repaired by the responsible party. Damage to the home as a result of the neglect or an intentional act or omission of the consumer is not required to be repaired. Such conduct may include, but is not limited to a failure of the consumer to report failures to the responsible party in a timely manner and failure to take steps to protect their home and property while awaiting repair.
- (k) Listed appliances, materials, fixtures, equipment, and similar items used in the assembly of the home shall be considered a defect if they fail prior to the home manufacturer's warranty, the product warranty, or a period of two years, whichever is greater and affects the performance of the home. Product warranties that extend beyond a period of two years or beyond the manufactured home

warranty shall be the sole responsibility of the appliance or product supplier.

- (l) Product suppliers who are required to repair or replace products shall be held to the same repair requirements, time requirements, and reporting requirements as the manufacturers and retailers.
- (m) The determinations of severity and of the number of homes involved shall be recorded in the home record of each home involved. The determinations for severity are required to be identified for each item listed in the complaint. The identification of the determination may be either individual line entries, full page entries, or a combination thereof. The record must also show if the issue involves more than one home.
- (n) All home records shall be kept by the manufacturer and retailer for five (5) years from the date the home was sold to the first purchaser or for a period of five (5) years from the date of completion of an investigation and/or repair campaign.

#### **§ 3282.406 SAA Authority and Responsibilities**

- (a) As set out at § 3282.302(b)(5), each SAA is the authority to and is responsible for, overseeing the handling of consumer complaints within their state. As part of that authority and responsibility, including assignment of responsible party after proper investigation, the SAA is required to monitor manufacturer compliance with this subpart, and particularly with § 3282.405. This monitoring will be done primarily by periodically checking the records that manufacturers are required to keep under 3282.405.
- (b) The SAA shall utilize the authority granted by Federal and State laws and regulations to assure the requirements of this consumer assistance subpart are accomplished.

**§ 3282.407 Required responsible party correction.**

A responsible party shall correct, at its expense, any imminent safety hazard, serious defect or defect that can be related to an error in design, construction, assembly, modification, addition, or alteration of, or to, the manufactured home which would include errors in design, workmanship or assembly of any component or system incorporated in the manufactured home that is discovered, subject to and within the limitations in § 3282.403.

**§ 3282.408 Reimbursement for prior correction by owner.**

A responsible party that is required to correct, shall provide reimbursement for reasonable cost of correction to any owner of an affected manufactured home who chose to make the correction before the responsible party did so, providing the responsible party was notified prior to the repair being performed.

**§ 3282.409 Plan for notification and correction.**

- (a) This section sets out the requirements that shall be met by responsible parties in preparing plans they are required to submit under § 3282.405. The underlying requirement is that the plan shows how the responsible party will fulfil its responsibilities with respect to notification and correction that arise under this subpart.
- (b) The plan shall identify, by serial number and other appropriate identifying criteria, all manufactured homes with respect to which correction and/or notification is required to be provided. Homes identified in the plan shall be those identified in accordance with the criteria set forth in sections 405 (e) and 405 (f) of this subpart. Methods that may be used in determining the extent of the class,

once the existence of a class on manufactured homes has been determined, includes for all responsible parties, but are not limited to:

- (1) Inspection of the design of the manufactured home, alteration, or addition in question to determine whether the failure resulted from the design itself;
- (2) Identification of the cause as relating to a particular employee, or process that was employed for a known period of time in producing or altering or adding to or affecting the manufactured home;
- (3) Inspection of records relating to components supplied by other parties and known to contain or suspected of containing imminent safety hazards, serious defects or defects. The class of manufactured homes identified by these methods may include only manufactured homes actually affected. If it is not possible to identify the precise manufactured homes, the class shall include manufactured homes suspected of containing the failure because the evidence shows that they may have been affected.

For manufactured home manufacturers the methods may also include:

- (1) Inspection of manufactured homes produced before and after the manufactured homes known to be affected;
- (2) Inspection of manufacturer quality control records to determine whether quality control procedures were followed;
- (3) Inspection of IPIA records to determine whether the imminent safety hazard or failure to conform was either detected or specifically found not to exist in some manufactured homes;

- (4) The plan shall include a statement by the IPIA operating in each plant in which manufactured homes in question were produced if requested by the SAA. In this statement, the IPIA shall concur in the methods used by the manufacturer to determine the class of potentially affected manufactured homes or state why it believes the methods to have been inappropriate, inadequate, or incorrect.
- (c) The plan shall include a deadline for completion of all notifications and corrections subject to 3282.405(j).
- (d) If the responsible party disputes a finding, ruling, or determination of the SAA, the responsible party may, within ten days of notice of any such finding, ruling, or determination, appeal such action to the Secretary.
- (e) The responsible party may propose a settlement offer that is acceptable to the SAA or Secretary for any situation involving non-compliances, defects, serious defects, or imminent safety hazards. Acceptance of a settlement offer by the SAA or the Secretary shall be binding and may supersede portions of this subpart specifically identified in the agreement.
- (f) Compliance with the steps and the methods outlined in this section shall constitute "good faith" efforts on the part of the responsible party or parties, and shall be prima facie evidence of compliance with this subpart.

**§ 3282.410 Completion of remedial actions and report.**

- (a) Where the responsible party is required to provide notification under this subpart, the responsible party shall maintain in its files for five (5) years from the date notification is completed, a copy of the notice sent and a complete list of the people and their

addresses. The files referred to in this section shall be organized such that each notification and/or correction can be readily identified and reviewed by an SAA or the Secretary.

- (b) Where a responsible party is required to provide correction under §3282.407 or where the responsible party otherwise corrects under §3282.405, the responsible party shall maintain in its files, for five (5) years from the date the correction work is completed, one of the following, as appropriate, for each manufactured home involved.
  - (1) Where the correction is made, a certification that the repair was made to satisfy completely the standards in effect at the time the manufactured home was manufactured and that the failure has been eliminated, or
  - (2) Where the owner refuses to allow repair to the home, a certification by the responsible party that the owner has been informed of the violation and that the owner has refused repair must be placed in the home file and made available upon request.
- (c) The responsible party shall, within 30 days after the deadline for completing any notifications and, where required, corrections, under an approved plan or under an order of an SAA or the Secretary, or any accepted settlement, provide a complete report of the action taken to the SAA or the Secretary, whoever approved the plan.

**§ 3282.411 Replacement or repurchase of manufactured home from purchaser.**

- (a) Whenever an imminent safety hazard or serious defect, which must be corrected by the responsible party at their expense under §3282.407, cannot be repaired within 60 days in accordance with section 615(i) of the Act, the Secretary may require:



- (1) That the manufactured home be replaced by the responsible party with a manufactured home substantially equal in size, equipment, and quality, and either new or in the same condition the defective manufactured home would have been in at the time of discovery of the imminent safety hazard or serious defect had the imminent safety hazard or serious defect not existed; or
  - (2) That the responsible party take possession of the manufactured home and refund the purchase price in full, less a reasonable allowance for depreciation based on actual use if the home has been in the possession of the owner for more than one year. Such depreciation shall be based upon an appraisal system approved by the Secretary, and shall not take into account damage or deterioration resulting from the imminent safety hazard or serious defect.
- (b) In determining whether to order replacement or refund by the responsible party, the Secretary shall consider:
- (1) The threat of injury or death to manufactured home occupants;
  - (2) Any costs and inconvenience to manufactured home owners which will result from the lack of adequate repair within the specified period;
  - (3) The expense to the responsible party;
  - (4) Any obligations imposed on the responsible party under contract or other applicable law of which the Secretary has knowledge; and
  - (5) Any other relevant factors which may be brought to the attention of the Secretary.
- (c) In those situations where, under contract or other applicable law, the owner has the right of election between replacement and refund, the manufacturer shall inform the owner of

such right of election and shall inform the Secretary of the election, if any, by the owner.

- (f) This section applies where an attempted correction of an imminent safety hazard or serious defect relieves the safety problem but does not bring the home in conformity to the standards.
- (g) Where replacement or refund by the responsible party is ordered under this section, It shall be carried out within 30 days of the Secretary's order to replace the manufactured home or refund the purchase price unless the Secretary, for good cause shown, grants an extension of time for implementation of such order.

**§3282.412 Manufactured homes in the hands of retailers and distributors.**

- (a) The responsible party shall correct any failures to conform and imminent safety hazards that exist in manufactured home which have been sold or otherwise released to a distributor or retailer but which have not yet been sold to a purchaser. This responsibility does not extend to failures to conform or imminent safety hazards that result from transit damage or alteration by others to the manufactured home after it leaves the control of the manufacturer. This section sets out the procedures to be followed by retailers and distributors for handling manufactured homes in such cases. Regardless of whether the responsible party is responsible for repairing a manufactured home, no retailer or distributor may sell a manufactured home if it contains a failure to conform which affects the performance of the home.
- (b) Whenever a retailer or distributor finds a problem in a manufactured home which a responsible party is responsible for correcting under paragraph (a) of this section, the retailer or distributor shall

contact the responsible party, provide full information concerning the problem, and request appropriate action by the responsible party in accord with paragraph (c) of this section. Where the responsible party agrees to correct, the responsible party shall maintain a complete record of its actions. Where the responsible party authorizes the retailer to make the necessary corrections on a reimbursable basis, the retailer or distributor shall maintain a complete record of its actions. Agreement by the responsible party to correct or to authorize corrections on a reimbursable basis under this paragraph constitutes a determination of the Secretary for purposes of section 613(b) of the Act with respect to judicial review of the amount which the responsible party agrees to reimburse the retailer or distributor for corrections.

(c) Upon a final determination by the Secretary or a State Administration Agency under §3282.409, or upon a determination by a court of competent jurisdiction that a manufactured home fails to conform to the standard after such manufactured home is sold or otherwise released by a manufacturer to a distributor or retailer and prior to the sale of such manufactured home by such distributor or retailer to a purchaser, the responsible party shall have the option to either:

(1) Immediately furnish, at the responsible party's expense, to the purchasing distributor or retailer the required conforming part or parts or equipment for installation by the distributor or retailer on or in such manufactured home, and the responsible party shall reimburse such distributor or retailer for the reasonable value of such installation plus a reasonable reimbursement of not less than one per centum per month of the manufacturer's or distributor's

selling price, prorated from the date of receipt by certified mail of notice of non-compliance to the date such manufactured home is brought into compliance with the standards, so long as the distributor or retailer proceeds with reasonable diligence with the installation after the part or component is received; or

(2) Immediately repurchase, at the responsible party's expense, such manufactured home from such distributor or retailer at the price paid by such distributor or retailer, plus all transportation charges involved and a reasonable reimbursement of not less than one per centum per month of such price paid prorated from the date of receipt by certified mail of notice of the imminent safety hazard, serious defect, defect or non-compliance to the distributor. The value of such reasonable reimbursements as specified in this paragraph shall be fixed by mutual agreement of the parties or by a court in an action brought under section 613(b) of the Act.

(d) This section shall not apply to any manufactured home purchased by a retailer or distributor, which has been leased by such retailer or distributor to a tenant for purposes other than resale. In that instance the retailer or distributor has the remedies available to a purchaser under this subpart.

#### **§ 3282.413 Notices, bulletins and other communications.**

Each responsible party shall, at the time of dispatch, furnish to the SAA or the Secretary a true or representative copy of all notices, bulletins, and other written communications to the retailers or distributors of such responsible party or purchasers or owners of manufactured homes of such responsible parties regarding any serious defect or

imminent safety hazard which may exist in any such manufactured homes produced by such manufacturer. Manufacturers shall keep complete records of all communications regarding imminent safety hazards, serious defects, defects, and non-compliances.

**§ 3282.414 Supervision of notification and correction actions.**

- (a) The SAA shall be responsible for assuring that notifications are sent to all owners, purchasers, retailers, or distributors of whom the responsible party has knowledge under §3282.211 or otherwise as required by these regulations, and the SAA shall be responsible for assuring that the required corrections are carried out by auditing the records required by §3282.410.
- (b) The SAA or Secretary to which the report required by § 3282.410(c) is sent shall be responsible for assuring through oversight that remedial actions described in the report have been carried out as described in the report.
- (c) The SAA of the state in which an affected manufactured home is located may inspect that manufactured home to determine whether any required correction is carried out to the approved plan or, if there is no plan, to the standards or other approval obtained by the responsible party.